REMARKS

Claims 37-65 and 67-77 are pending in this application and have been subjected to restriction under 35 U.S.C. §121 because, in the Examiner's opinion, as set forth in the Detailed Action, the application contains claims directed to ten patentably distinct inventions as follows:

Group I: claims 37, 41, 48, 52, 53, 54, 56, 57, 58, 59, 76, and 77, drawn to a recombinant viral vector expressing one foreign nucleic acid structure, classified in class 435, subclass 320.1;

Group II: claims 37, 38, 42, 43, 44, 45, 46, 47, 49, 50, 51, 55, 69, 70, 73, and 74, drawn to a recombinant viral vector expressing two foreign nucleic acid structures, classified in class 435, subclass 320.1;

Group III: claims 37, 39, 71, and 72, drawn to a recombinant viral vector expressing three foreign nucleic acid structures, classified in class 435, subclass 320.1;

Group IV: claims 37 and 40, drawn to a recombinant viral vector expressing four foreign nucleic acid structures, classified in class 435, subclass 320.1;

Group V: claim 60, drawn to a vaccine comprising a mixture of a recombinant virus with an effective immunizing amount of a second immunogen, classified in class 424, subclass 184.1;

Group VI: claims 61, 62, and 64, drawn to a method of enhancing an immune response by administering a recombinant virus, classified in class 424, subclass 9.2;

Group VII: claims 63 and 65, drawn to a method of suppressing an immune response by administering a recombinant virus, classified in class 424, subclass 9.2;

Group VIII: claims 67 and 68, drawn to a method of abrogating a tumor in a feline by administration of CD80, classified in class 435, subclass 7.23;

Group IX: claims 67 and 68, drawn to a method of abrogating a tumor in a feling by administration of CD86, classified in class 435, subclass 7.23; and

Group X: claims 67 and 68, drawn to a method of abrogating a tumor in a feline by administration of a mixture of CD80 + CD86, classified in class 435, subclass 7.23.

As stated above, applicants provisionally elect Group I, including claims 37, 41, 48, 52, 53, 54, 56, 57, 58, 59, 76, and 77, for prosecution. Applicants respectfully disagree with the restriction requirement imposed by the Examiner and the characterizations made of the claimed invention. Accordingly, this election is made with traverse.

It is the Examiner's position that the groups contain claims having different modes of operation, functions, or effects, and that multiple classes of prior art must be searched. Applicants respectfully disagree with the Examiner's position.

According to M.P.E.P. §803, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

(1) The inventions must be independent or distinct as claimed; **and**

(2) There must be serious burden on the examiner if restriction is not required.

Applicants respectfully submit that (1) all groups of restricted claims are properly presented in the same application; (2) undue diverse searching would not be required; and (3) all claims should be examined together.

The Examiner has not shown that examination of all the pending claims would require undue searching and/or place a serious burden on the Examiner, which is a requisite showing for proper issuance of a restriction requirement. In fact, applicants submit that to properly search any one group, other group classifications must be considered as well to perform a comprehensive search.

There are seven groups of inventions which are classified in class 435, with each group further classified in only one subclass. To search prior art in 2 subclasses within the same class cannot be deemed "undue diverse searching." Furthermore, the remaining three groups of inventions are classified in class 424, with each group further classified in only one subclass. For similar reasons, a search of the prior art in 1 subclass within the same class cannot be deemed as "undue diverse searching."

Accordingly, the applicants respectfully traverse the requirement for restriction at least on the grounds that examining the identified groups would not be unduly burdensome.

The Examiner has also indicated that for each of the inventions of Groups I-VII, a further election of inventions (A) - (D) is also required. In addition, for each of the inventions of

Groups I-X, restriction to one of inventions (E) - (G) is further required. Finally, the Examiner has indicated that for each of Groups II-IV, further restriction to one of inventions (H) - (Z) is also required.

The Applicant is directed to MPEP §806.04 and §808.01 which relates to species election. At page 800-48, left column, first full paragraph under §808.01 of the MPEP, a requirement for an election of species should be made "[i]n all applications in which no species claims are present and a generic claim recites such a multiplicity of species that an unduly extensive and burdensome search is required." Applicants assume that the Examiner has identified Inventions (A) - (D), (E) - (G), and (H) - (Z) at page 5 of the Restriction Requirement, as individual species of Groups I-X. Accordingly, along with the selection of Group I with traverse, the Applicants elect species (C) directed to the feline CD86 protein and species (F) drawn to swinepoxvirus to comply with the Examiner's requirement. Both species elections are made without traverse.

Alternatively, if the Examiner intended to further restrict the instant application and require a selection of one of the inventions denoted as (A) - (D), the Applicants select Group (C) directed to the feline CD86 protein with traverse. In addition, if the Examiner intended to even further restrict the instant application and require a selection of one of the inventions denoted as (E) - (G), then the Applicants select Group (F) drawn to swinepoxvirus with traverse.

Applicants traverse the restriction requirement for the reasons stated above for inventions I-X, *i.e.*, though all the combinations of the inventions (A) - (D) and (E) - (G) are distinct and independent, there would not be a serious burden on the Examiner to examine all of the Groups identified. Be that as it may, the Applicants note that the Examiner has indicated that Claim 37 links Groups I-IV and (E)-(G) and that upon its allowance, the restriction requirement as to the linked inventions shall be withdrawn.

CONCLUSION

The Applicants respectfully submit that the Requirement for Restriction is improper for at least the reasons stated, and request that the Restriction Requirement be withdrawn and all presented claims be examined on the merits.

In view of the foregoing, the applicants respectfully submit that claims 37-65 and 67-77 as listed herein are properly presented in this application and that the claims are allowable over the art prior art.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **13-4500**, Order No. 2976-4055US2. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

No fees are believed due in connection with this response and this paper is believed to be timely filed. However, should an extension of time be necessary, such extension is hereby petitioned. The Commissioner is authorized to charge any fees or credit any overpayments which may be required for this paper to Deposit Account Number 13-4500, Order No. 2976-4055US2.

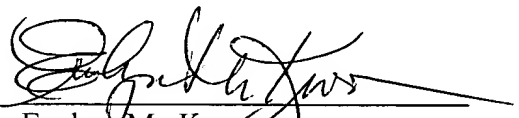
In the event that a telephone conference would facilitate prosecution, the Examiner is invited to contact the undersigned at the number provided.

An early and favorable decision on the merits is respectfully requested.

Respectfully submitted,

MORGAN & FINNEGAN, L.L.P.

Dated: September 23, 2005

By: 

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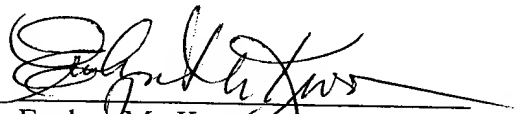
By: 

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